IN THE COURT OF APPEALS OF THE STATE OF ALASKA

KELLY R. CARR, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12007 Trial Court No. 3PA-01-2455 CR MEMORANDUM OPINION No. 6337 — May 25, 2016

Appeal from the Superior Court, Third Judicial District, Palmer, Eric Smith, Judge.

Appearances: Kelly R. Carr, *in propria persona*, Anchorage, for the Appellant. Diane L. Wendlandt, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge MANNHEIMER.

Kelly R. Carr was convicted of several counts of sexual abuse of a minor (in both the first and second degree), one count of unlawful exploitation of a minor, and five counts of possession of child pornography. The evidence supporting those

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

convictions is summarized in our first decision in this case, *Carr v. State I*, unpublished, 2007 WL 1228948 (Alaska App. 2007).

In that first decision, we affirmed Carr's convictions, but we vacated his sentence because we concluded that the superior court had improperly relied on an aggravating factor. We directed the superior court to re-sentence Carr without reliance on this aggravating factor. *Carr*, 2007 WL 1228948 at *7.

The superior court re-sentenced Carr, and the ensuing appeal led to our second decision in this case, *Carr v. State II*, unpublished, 2011 WL 765914 (Alaska App. 2011).

In our second decision, we addressed Carr's arguments that several of his conditions of probation were improper. We held that it was too late for Carr to raise these arguments — because Carr received exactly the same conditions of probation when he was sentenced the first time, and because he failed to challenge those conditions of probation in his first appeal. *Carr II*, 2011 WL 765914 at *1. *See Hurd v. State*, 107 P.3d 314, 327-29 (Alaska App. 2005).

We noted, however, that "Carr [was] still free to ask the superior court to modify or abrogate [his] conditions of probation." *Carr II*, 2011 WL 765914 at *1.

In September 2013, Carr was released from prison on concurrent probation and parole. In the spring of 2014, he filed a motion asking the superior court to modify or abrogate a dozen of his conditions of probation, either on the ground that they did not apply to his circumstances or on the ground that the facts of his case did not provide sufficient justification for imposing them.

The State conceded that a few of Carr's conditions of probation needed to be modified, but the State opposed Carr's requests with respect to the rest of his conditions.

The superior court adjusted the conditions that the State conceded should be modified, but in all other respects the superior court did not reach the merits of Carr's arguments. Instead, the superior court concluded that Carr was procedurally barred from challenging these other conditions of probation because he did not attack them earlier: "These conditions were imposed at sentencing and should have been challenged at that time."

Carr now appeals the superior court's decision. But in Carr's brief to this Court, he does not address the superior court's ruling that he is procedurally barred from challenging his conditions of probation. Instead, Carr simply presents all of his arguments anew, as if this Court were the sentencing court, and he asks this Court to overturn the challenged conditions of probation even though the superior court never reached the merits of his arguments.

An appellant (*i.e.*, a party seeking to overturn a lower court's ruling) must not only challenge the lower court's ruling but also address the substance of the lower court's ruling — *i.e.*, the lower court's *reasons* for its ruling — and show that the lower court's analysis was wrong. If the appellant fails to address the lower court's reasons for its ruling, the appellant waives their claim of error. [1]

Applying this rule to Carr's case, we conclude that Carr has waived his claim that the superior court committed error by denying his motion to modify the conditions of his probation. Accordingly, the decision of the superior court is AFFIRMED.

We note that the State acknowledges that Carr should be allowed to return to the superior court and seek modification of his conditions of probation if he can show

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[1] *See Ennen v. Integon Indem. Corp.*, 268 P.3d 277, 289 (Alaska 2012); *Zok v. State*, 903 P.2d 574, 576 n. 2 (Alaska 1995); *Garhart v. State*, 147 P.3d 746, 752 (Alaska App. 2006).

changed circumstances. We express no opinion as to whether Carr can show changed circumstances — and no opinion as to whether, if he does show changed circumstances, the superior court should modify his conditions of probation in light of those changed circumstances.